IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 86 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANINDO ACHINTO BANARJEE
Versus
STATE OF GUJARAT

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Appearance :
MR H.S.MULIA for Applicant
MR KC SHAH APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA
Date : 07/02/2006

ORAL JUDGMENT

1 Rule. Waived by learned APP Mr.K.C. Shah. Rule was heard forthwith. The present petitioner came to be convicted for the offences punishable under Sections 420 and 120-B of the Indian Penal Code as well as under Sections 467, 468 and 471 of the Indian Penal Code by learned Chief Metropolitan Magistrate, in Criminal Case No. 63 of 2005 on pleading guilty by the

accused.

2 Accused present petitioner preferred Criminal Appeal before the Court of Sessions, Ahmedabad City, which was numbered as Criminal Appeal No. 5 of 2005. The said Criminal Appeal came to be decided by learned Additional City Sessions Judge, Court No.5, Ahmedabad and while dismissing the Appeal, learned Additional Sessions Judge also made it clear that the sentence of imprisonment of four years awarded to the petitioner for the offences punishable under Sections 420 and 120-B shall run consecutively to the sentences awarded for the offences punishable under Sections 467, 468 and 471 of the Indian Penal Code. It was also made clear that the sentences awarded for the offences punishable under Sections 467, 468 and 471 shall run concurrently, but in same trial, the sentence awarded for the offences punishable under Section 420 shall run consecutively to the sentences awarded for the offences punishable under Sections 467, 468 and 471. Both the courts below under Section 428 also gave benefit of set off to the accused for the sentences awarded to him in respect of offences punishable under Sections 467, 468 and 471 of the IPC.

3 The accused therefore filed Criminal Revision Application No. 1034 of 2005 before this Court and raised first time the issue that when in the same trial some of the sentences are directed to run consecutively, for some of the

sentences the set off as provided for under Section 428 of the Code of Criminal Procedure is available to the accused for both the sentences which are directed to run consecutively. Thereupon, this court remanded the matter to the appellate Court vide order dated 10th of January, 2006 with a direction that the issue raised by the accused in Criminal Revision Application No. 1034 of 2005 was required to be decided by the appellate court as early as possible. Therefore, first appellate court i.e. Additional City Sessions Judge at Ahmedabad in the said Appeal after hearing the prosecution as well as the present applicant rejected the contention of the applicant vide his order dated 30th of January,2006 on the ground that the applicant was not entitled to double benefit of set off as claimed by him and hence this Revision Application.

4 Learned Advocate Mr. Mulia for the applicant heavily relied upon a decision of the Apex Court in the matter of STATE OF MAHARASHTRA vs. NAJAKAT, as reported in AIR 2001 SC 2255. My attention was drawn to paras 14, 15 and 18 of the said judgment and it was contended that the Apex Court in the circumstances where the accused is convicted in two trials separately and was undergoing detention period at pre-trial stage, directed to award benefit of set off to the accused in one trial of the period of detention which he had undergone for the second case. The Apex Court Court interpreted the words “as

the same case" and observed that they are not to be understood as suggesting that the set off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed. Relying upon this ratio, learned Advocate for the applicant has strenuously submitted that the accused is entitled to benefit of set off of the same period for both the set of sentences which are directed by both the courts below to run consecutively.

5 This application is opposed by the learned APP Mr. K.C. Shah for the respondent State.

6 Hearing the learned counsels for the parties, it is necessary to refer to the decision of the Apex Court heavily relied upon by the learned Advocate for the applicant. It is necessary to refer to para-2 of the said decision which is as under :

> "2. An accused has been convicted and sentenced to imprisonment in two criminal cases. As he was arrested on the same day in connection with both the cases he remained in jail as under-trial prisoner during the same period in both cases. The question mooted in this appeal is this: Is it permissible for him to claim the benefit of set off envisaged in Section 428 of the Code of Criminal Procedure (for short `the Code') in both cases? As the High Court

of Bombay has answered the question in the affirmative by the impugned judgment this appeal is filed by the State of Maharashtra in challenge of the said view of the High Court."

Thus, the ratio laid down by the Apex Court in the above said decision is in respect of the backdrop of the facts as mentioned in above para, wherein the accused was undergoing pre-trial detention in one case as well as in second case as well. It was not the case that the accused was undergoing pre-trial detention in one case only and not in the second case. In these backgrounds, the Apex Court laid down the ratio that though the accused had undergone detention at pre-trial stage which practically comes to second period, but the accused would be entitled to set off in both the cases. While in the present case, the situation is altogether different. The accused petitioner faced one trial only. The accused had undergone detention at pre-trial stage in one case only, but on conviction, he was convicted to certain offences, for which it was directed that certain sentences shall run concurrently, but sentences awarded for the offence under Section 420 shall run consecutively though other sentences which have made concurrently inter se. Both the courts below also awarded set off for the period of detention at pre-trial stage for one set of sentences, and now in those circumstances, the petitioner raises an issue that for second set of sentences, which is

directed to run consecutively, he is entitled to set off detention period on pre-trial stage as well, even though the same period of the detention of pre-trial stage is given to the accused for his set of sentences.

7 In my humble view, this sort of situation is never covered by the provisions of Section 428 of the Cr.P.C. to award double benefit of the same period of detention at pre-trial stage. Learned Sessions Judge rightly appreciated the contention raised and rightly interpreted the provisions of law and came to the conclusion that the ratio laid down in the matter of State of Maharashtra vs. Najakat (supra) is not applicable to the facts of the present case. Therefore, the order impugned requires no interference in this Revision Application.

8 This Revision Application stands dismissed. Rule is discharged.

(J.R.VORA, J.)

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